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Guide for employers⁴ regarding Employment application forms and Interviews under the Ontario Human Rights Code

Distributed by the Ontario Human Rights Commission, Ministry of Labour.

Guide for employers

The Ontario Human Rights Code

The Ontario Human Rights Code, passed in June, 1962 by the Ontario Government, consolidated into one document all the Province's human rights legislation which previously existed in the form of several individual acts. A further substantial amendment was passed in June, 1972 which incorporated into the Code related human rights legislation prohibiting discrimination on the grounds of sex and age.

Underlying Principle

The principle underlying the Ontario Human Rights Code as it relates to employment application forms and interviews is to concentrate on merit employment and eliminate the temptation to bypass applications from individuals who might well be qualified but whose membership in a minority group is held against them. Thus the personnel officer who reads the application will judge whom he will interview solely on the basis of qualifications.

Other grounds of possible discrimination in employment, aside from minority group membership, are age, sex and marital status. Though it is permissible to inquire as to age and marital status on application forms, this information must not be used as the basis of discriminatory treatment. The Code makes discrimination — either direct or indirect — on the basis of age, sex and marital status grounds for formal complaints.

Legislation relating to employment practices

The section of the Ontario Human Rights Code dealing with fair employment practices includes the following provisions:

- (b) dismiss or refuse to employ or to continue to employ any person;
- (c) refuse to train, promote or transfer an employee; subject an employee to probation or apprenticeship or enlarge a period of probation or apprenticeship;
- (e) establish or maintain any employment classification or category that by its description or operation excludes any person from employment or continued employment;
- (f) maintain separate lines of progression for advancement in employment or separate seniority lists where the maintenance will adversely affect any employee; or
- (g) discriminate against any employee with regard to any term or condition of employment.

Age, as defined by the Code, means the age range of 40 to 65 years. Job advertisements may not specify an upper age limit below 65 years.

Application forms and interviews

In order to assist employers in the process of advertising for and interviewing prospective employees, the *Guide for Employers* has been prepared. The chart indicates the kinds of questions which may be asked of applicants without violation of the Ontario Human Rights Code as well as the kinds of questions which are prohibited by the provisions of the Code.

It should be clearly understood that the contents of this pamphlet do not provide a complete definition of

Pre-employment and post-employment inquiries

A distinction may be drawn between pre-employment and post-employment inquiries. In some cases, a question which could be construed as a violation of the Code if asked of an applicant *before* he has been hired, may be appropriately asked *after hiring*, so long as the information obtained is necessary for personnel purposes and is not used as a basis for discrimination in employment.

The chart indicates inquiries which are valid after hiring, such as a request for a birth certificate or a photograph or information regarding religion in order to determine leave-of-absence for religious holidays.

Further information

Employers are invited to discuss their particular problems or concerns with regard to pre-employment inquiries with the Ontario Human Rights Commission. Further information as well as copies of the Ontario Human Rights Code and other publications may be obtained from any office of the Commission.

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It is public policy in Ontario that every person is free and equal in dignity and rights regardless of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin.

Guide for employers regarding Employment application forms and Interviews under the Ontario Human Rights Code

Lawful	Inquiries before hiring	Unlawful
a. Maiden name. b. Name used if previously employed under different name.	1. Name	Inquiry into previous name where it has been changed by court order, or otherwise.
Inquiry into place and length of current and previous addresses in Canada.	2. Address	Inquiry into foreign addresses which would indicate national origin.
Request birth certificate after hiring.	3. Birthplace, nationality, ancestry, place of origin	a. Request birth certificate or baptismal certificate. b. Any inquiry into place of birth. c. Any inquiry into place of birth of parents, grandparents, or spouse. d. Any other inquiry into national origin.
	4. Race or colour	Any inquiry which would indicate race, colour or complexion.
May be required after hiring for identification purposes.	5. Photographs	Request photograph
	6. Religion-creed	a. Any inquiry to indicate or identify religious denomination or customs. b. May not be told this is a Protestant (Catholic or Jewish) organization. c. Request pastor's recommendation or reference.*
	7. Citizenship	a. Whether a Canadian citizen or British subject. b. If native-born or naturalized. c. Date citizenship received. d. Proof of citizenship. e. Inquiries regarding citizenship status of parents or spouse. f. Any inquiry into citizenship status which would tend to divulge applicant's nationality, ancestry, or place of origin.
a. Inquiry into what academic, professional, or vocational schools attended. b. Inquiry into language skills, such as reading and writing of foreign languages.	8. Education	a. Any inquiry asking specifically the nationality, racial, or religious affiliation of a school. b. Inquiry as to what is mother tongue or how foreign languages ability was acquired.
Inquiry after hiring into name and address of person to be notified in case of emergency.	9. Relatives	a. Name and address of closest relative. b. Any inquiry about a relative which cannot be asked of an applicant.
Inquiry into organization memberships with the qualification, 'Do not list clubs or organizations of a religious, racial, or national character.'	10. Organization	a. Ask to list all clubs and organizations where membership is held.* b. Specific inquiry into clubs and organizations which would indicate race, creed, colour, nationality, ancestry or place of origin.
a. Inquiry into willingness to work required work schedule. b. Inquiry after hiring about religion to determine when leave-of-absence might be required for the observance of religious holidays.	11. Work Schedule	Any inquiry into willingness to work any particular religious holiday.
Inquiry into Canadian military service.	12. Military service	Inquiry into all military service.

Any inquiry is forbidden which, although not specifically listed among the above, is designed to elicit information as to race, creed, colour, nationality, ancestry or place of origin in violation of the Ontario Human Rights Code.

* This does not prohibit the voluntary submission by applicants of such information. It is, however, contrary to the principles of the Code for an employer to request this information.